

PROPOSED CONSENT JUDGMENT FOR PUBLIC REVIEW

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON, ex rel. DICK
PEDERSEN, DIRECTOR DEPARTMENT
OF ENVIRONMENTAL QUALITY,

Plaintiff,

v.

PORTLAND HARBOR HOLDINGS II, LLC,

Defendant.

Case No.

CONSENT JUDGMENT

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1 1. Purpose

2 This Consent Judgment (“Consent Judgment”) is filed simultaneously with and for the
3 purpose of resolving the underlying complaint by the State of Oregon. Plaintiff State of Oregon
4 *ex rel.* the Director of the Oregon Department of Environmental Quality (“DEQ”) and Defendant
5 Portland Harbor Holdings II, LLC (“PHH” or “Defendant”) desire to resolve this action without
6 litigation and have agreed to entry of the Consent Judgment without admission or adjudication of
7 any issue of fact or law. The mutual objectives of DEQ and PHH (individually a “Party” and
8 collectively “the Parties”) are to protect public health, safety, and welfare and the environment,
9 facilitate restoration and reuse of property, and provide PHH protection from potential liabilities
10 in accordance with applicable law.

11 2. Stipulations

12 A. PHH stipulates:

- 13 (1) To entry of this Consent Judgment;
14 (2) To perform and comply with all provisions of this Consent Judgment; and
15 (3) In any proceeding brought by DEQ to enforce this Consent Judgment, not
16 to litigate this Court’s jurisdiction over this matter or the validity of the Consent Judgment.

17 B. DEQ and PHH stipulate:

- 18 (1) Portland Harbor Holdings II, LLC is a Delaware limited liability company.
19 (2) The property proposed for purchase by PHH from Alder Creek Lumber
20 Company (“Alder Creek”), which is currently owned and operated by Alder Creek, is an
21 approximately 64-acre site located at 14456 NW Gillihan Road, Multnomah County, Oregon, in
22 Section 27, Township 2 North, Range 1 West, of the Willamette Meridian (the “Property”). The
23 Property is illustrated generally in the Site Vicinity Map and the Site Plan, Attachments A and B
24 to this Consent Judgment, respectively. The legal description of the Property is set forth in
25 Attachment C to this Consent Judgment. All attachments are incorporated into this Consent
26 Judgment by this reference.

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1 (3) Lumber operations at the Property ran from the early 1960s until October
2 1, 2008, when the owners closed the sawmill and associated machinery due to economic
3 conditions. When the sawmill was operating, logs were unloaded from wood storage areas on
4 the west portion of the Property and either stored on the portion of the Property inside the levee,
5 or taken to the sawmill for initial processing. The wood was then moved to the planer building
6 where it was cut into lumber and treated with antifungal chemicals. From here, the lumber was
7 taken to the bander shed where it was banded with metal straps for shipment and sale. Current
8 site activities are limited to processing and removal of wood chips for sale in landscaping and
9 other applications.

10 (4) Investigations at the Property have included an environmental screening
11 assessment conducted by MFA in 2010, a Phase I Environmental Site Assessment conducted by
12 URS in 2010, and a Phase II Environmental Site Assessment completed by URS in 2011. Site
13 sampling documented in these reports indicates there are localized areas of contamination, and
14 that the majority of soil proposed for removal is relatively uncontaminated.

15 (5) Contaminants found in soil above risk-screening criteria include petroleum
16 hydrocarbons, metals, polychlorinated biphenyls (“PCBs”), and semivolatile organic compounds
17 (“SVOCs”). Contaminants found in groundwater above risk- screening criteria include
18 petroleum hydrocarbons, metals, and SVOCs. These contaminants are “hazardous substances”
19 within the meaning of ORS 465.200(16). The presence of hazardous substances at the Property
20 constitutes a “release” of hazardous substances within the meaning of ORS 465.200(22), and
21 makes the Property a “facility” within the meaning of ORS 465.200(13).

22 (6) PHH proposes to perform a Restoration Action which is described in
23 detail in Attachment D. Generally, the 64-acre site is bisected by a Corps of Engineers dike
24 protecting Sauvie Island. PHH will conduct a habitat restoration project on the outboard side of
25 this levee, and will place fill material generated by the excavation necessary to recontour the site
26 on the inboard side of the levee. Specifically, PHH will be: (a) removing or ensuring the

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1 removal of approximately 100,000 cubic yards of non-contaminated wood debris (chips,
2 sawdust, and similar as described further below) for sale as soil amendment, composting,
3 biomass, or other purpose; (b) removing the existing sawmill infrastructure from the Property;
4 (c) relocating approximately 600,000 cubic yards of earthen material from outside the dike and
5 placing it on the interior side of the dike; and (d) creating a combination of riparian, channel,
6 tidal marsh, and mud flat habitats where the excavated material was removed (the "Restoration
7 Project"). To ensure permanent protection of the Property as a wildlife habitat, a conservation
8 easement or deed restriction will be assigned to a non-profit entity or government organization.
9 Both the channel network and fill relocation portions of the property have been analyzed in the
10 Phase I and II Environmental Assessments described in Paragraph 2.B.(4). PHH will manage
11 any excavated soils contaminated by hazardous substances as specified in the Restoration Work
12 Plan. PHH will manage all fill and woody material in accordance with OAR Chapter 340
13 Division 93. Disposal, recycling, or reuse of other materials removed from the Property will be
14 determined based on criteria identified in the Restoration Work Plan.

15 (7) Pursuant to ORS 465.255(1)(b), PHH could become liable to DEQ and
16 other persons for releases of hazardous substances at or from the Property by becoming the
17 owner or operator of the Property with actual or constructive knowledge of the releases. This
18 Consent Judgment is entered for the purpose of protecting PHH from potential liability for pre-
19 acquisition releases of hazardous substances at or from the Property, in return for PHH
20 undertaking certain obligations, as described in this Consent Judgment. This Consent Judgment
21 is entered into pursuant to ORS 465.325 and ORS 465.327.

22 (8) On September 3, 2010, PHH applied to DEQ for a prospective purchaser
23 agreement under ORS 465.327 and agreed to reimburse DEQ's costs of technical review and
24 agreement preparation.

25 (9) On September 1, 2011, DEQ published notice of this proposed Consent
26 Judgment for the Property, and provided opportunity for public comment, in accordance with

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1 ORS 465.320 and 465.325(4)(d). The 30-day public comment period ended [Date], during
2 which DEQ received comments from _____. These comments were considered by
3 DEQ, as documented in the agency's file.

4 (10) Consistent with ORS 465.327(1):

5 (i) PHH is a "person" within the meaning of ORS 465.200(21);

6 (ii) PHH is not currently liable under ORS 465.255 for the existing
7 releases of hazardous substances at the Property;

8 (iii) Removal or remedial action is necessary at the Property to protect
9 human health or the environment;

10 (iv) PHH's ownership and operation of the Property will not cause,
11 contribute to, or exacerbate existing contamination, increase health risks, or interfere with
12 remedial measures at the Property; and

13 (v) A substantial public benefit will result from the Restoration Project.

14 (11) In determining to enter into this Consent Judgment, DEQ considered
15 reasonably anticipated future land uses at the Property and surrounding properties and consulted
16 with Multnomah County.

17 (12) The restoration activities proposed for the Property will provide a
18 substantial public benefit to the local community and the State of Oregon by improving water
19 quality, providing natural habitat for fish and other wildlife species, and by directly and
20 indirectly supporting local family wage jobs through technical studies and construction efforts.

21 Based on the administrative record, the Director of DEQ determines that: (a) the release from
22 liability set forth in Subsection 5.A satisfies the criteria set forth in ORS 465.327(1); (b) the
23 covenant not to sue set forth in Subsection 5.C satisfies the criteria set forth in ORS
24 465.325(7)(a) and (d); and (c) this Consent Judgment and PHH's commitments under this
25 Consent Judgment will expedite removal or remedial action, minimize litigation, be consistent
26 with rules adopted under ORS 465.400, and be in the public interest.

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3. Work to be Performed

A. Restoration

PHH will perform restoration in accordance with the Restoration Work Plan.

B. Soils Management

PHH will manage any excavated soils contaminated by hazardous substances as specified in the Restoration Work Plan. PHH will manage all fill and woody material in accordance with OAR Chapter 340 Division 93. Disposal, recycling, or reuse of other materials removed from the Property will be determined based on criteria identified in the Restoration Work Plan.

C. Modification of Work Plans

PHH and DEQ may modify the work plans as appropriate by agreement, without the approval of this Court. If DEQ determines that modification to the work specified in a work plan is necessary to protect human health or the environment, DEQ may require that such modification be incorporated in the work plan. Subject to dispute resolution under Subsection 4.L. of this Consent Judgment, PHH will modify the work plan as required by DEQ and implement any work required by the modifications.

D. Periodic Review

At least once every five years, or until DEQ determines that periodic reviews are no longer needed, DEQ will review the restoration work to ensure that the Property remains protective of public health, safety, and welfare and the environment. Periodic reviews will include evaluation of monitoring data, progress reports, inspection and maintenance reports, land and water uses, and any other relevant information.

E. Additional Measures

PHH may elect at any time during the term of this Consent Judgment to undertake measures, beyond those required under this Consent Judgment, necessary to address the release or threatened release of hazardous substances at the Property. Such additional measures are

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subject to prior approval by DEQ. DEQ's approval will be granted if DEQ determines that the additional measures will not threaten human health or the environment.

4. General Provisions

A. Project Managers

(1) To the extent possible, all reports, notices, and other communications required under or relating to this Consent Judgment must be directed to:

DEQ Project Manager:

Bob Schwarz

Department of Environmental Quality

Eastern Region

400 E. Scenic Drive, Suite 307

The Dalles, Oregon 97058

Phone: 541-298-7255, x230

E-mail: schwarz.bob@deq.state.or.us

PHH Project Manager

Julie Mentzer

Wildlands PNW

520 SW 6th Avenue, Suite 914

Portland, Oregon 97204

Phone: 503-241-4895

E-mail: jmentzer@wildlandsinc.com

(2) The Project Managers or their respective designees must be available and have the authority to make day-to-day decisions necessary to comply with the obligations under this Consent Judgment.

B. Supervising Contractor

(1) All aspects of work to be performed by PHH pursuant to this Consent Judgment must be performed under the direction and supervision of a qualified employee or contractor having experience in hazardous substance remediation and knowledge of applicable state and federal laws, regulations, and guidance.

(2) Before initiation of work under this Consent Judgment, PHH will notify DEQ in writing of the name, title, and qualifications of any proposed supervising contractor. DEQ may for good cause disapprove the proposed contractor. In the event of such disapproval, DEQ, within 14 days of receipt of the initial notice from PHH, will notify PHH in writing of the

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1 reasons for its disapproval. PHH, within 14 days of receiving DEQ's notice of disapproval, will
2 notify DEQ of the name, title, and qualifications of an alternate supervising contractor, subject to
3 DEQ's right to disapprove under the terms and schedule specified above. Any affected work
4 schedule is extended, in the event that a delay is caused due to DEQ disapproval of a contractor
5 or contractors, in an amount of time corresponding to the delay but not exceeding 60 days from
6 the date of DEQ's initial or subsequent disapproval.

7 (3) If, during the course of work under this Consent Judgment, PHH proposes
8 to change its supervising contractor, PHH will notify DEQ in accordance with the provisions of
9 the preceding paragraph. DEQ may disapprove such contractor, under the terms and schedule
10 specified in the preceding paragraph.

11 C. DEQ Approvals

12 (1) Where DEQ review and approval is required for any plan or activity under
13 this Consent Judgment, PHH may not proceed to implement the plan or activity until DEQ
14 approval is received. DEQ will make every reasonable effort to conduct plan and activity review
15 promptly so that any proposed development activities are not unduly delayed. Any DEQ delay
16 in granting or denying approval correspondingly extends the time for completion by PHH. Prior
17 approval is not required in emergencies; provided, PHH will notify DEQ immediately after the
18 emergency and evaluate the impact of its actions.

19 (2) After review of any plan, report, or other item required to be submitted for
20 DEQ approval under this Consent Judgment, DEQ will: (a) approve the submission in whole or
21 in part; or (b) disapprove the submission in whole or in part, and notify PHH of its deficiencies
22 and/or request modifications to cure the deficiencies.

23 (3) DEQ approvals, rejections, or identification of deficiencies must be given
24 as soon as practicable in writing, and state DEQ's reasons with reasonable specificity.

25 (4) In the event of DEQ disapproval or request for modification of a
26 submission, PHH will, within 30 days of receipt of the DEQ notice or such longer time as may

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1 be specified in the notice, either correct the deficiencies and resubmit the revised report or other
2 item for approval, or institute dispute resolution under Subsection 4.L. of this Consent Judgment.

3 (5) In the event of two deficient submittals of the same deliverable that are
4 deficient for the same reasons due to PHH's failure to cure the original deficiency, DEQ may
5 modify the submission to correct the deficiency.

6 (6) In the event of approval or modification of the submission by DEQ, PHH
7 will implement the actions required by the plan, report, or other item, as so approved or
8 modified.

9 D. Access to Property

10 (1) PHH will allow DEQ to enter all portions of the Property owned by or
11 under the control of PHH at all reasonable times for the purpose of overseeing PHH's
12 performance under this Consent Judgment, including but not limited to inspecting records
13 relating to work under this Consent Judgment, observing PHH's progress in implementing this
14 Consent Judgment, conducting such tests and taking such samples as DEQ deems necessary,
15 verifying data submitted to DEQ by PHH, conducting periodic review, and using camera, sound
16 recording, or other recording equipment. DEQ will make available to PHH, upon PHH's
17 request, any photographs or recorded or videotaped material taken.

18 (2) PHH will also use all reasonable good faith efforts to obtain access to
19 property not owned or controlled by PHH, as necessary to perform the work required in this
20 Consent Judgment, including access by DEQ for purposes described in Paragraph 4.D.(1) . DEQ
21 may use its statutory authority to obtain access to property on behalf of PHH if DEQ determines
22 that access is necessary and that PHH has exhausted all reasonable good faith efforts to obtain
23 access.

24 E. Records

25 (1) In addition to those reports and documents specifically required under this
26 Consent Judgment, PHH will provide to DEQ, within 10 days of DEQ's written request, copies

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1 of QA/QC memoranda and audits, raw data, final plans, task memoranda, field notes (not made
2 by or at the direction of PHH's attorney), and laboratory analytical reports relating to any
3 removal or remedial action conducted by PHH at the Property.

4 (2) PHH will preserve all records and documents in possession or control of
5 PHH or its employees, agents, or contractors that relate to any removal or remedial action
6 pursuant to this Consent Judgment for at least five years after any transfer by PHH under
7 Subsection 8.B. Upon DEQ's request, PHH will provide, or make available for DEQ's copying,
8 copies of such records and documents to DEQ. For a period of 10 years after certification of
9 completion under Section 9, PHH will provide DEQ 60 days' notice before destruction or other
10 disposal of such records or documents. PHH has no further obligation to DEQ to preserve
11 documents or records after the ten-year period.

12 (3) Subject to Paragraph 4.E.(4), PHH may assert a claim of confidentiality
13 regarding any documents or records submitted to or copied by DEQ pursuant to this Consent
14 Judgment. DEQ will treat documents and records for which a claim of confidentiality has been
15 made in accordance with ORS 192.410 through 192.505. If PHH does not make a claim of
16 confidentiality at the time the documents or records are first submitted to or copied by DEQ, the
17 documents or records may be made available to the public without notice to PHH.

18 (4) PHH may not assert attorney-client or attorney work product privilege
19 with respect to any records required to be submitted under Paragraph 4.E.(1). DEQ reserves its
20 rights under law to obtain documents DEQ asserts are improperly withheld by PHH.

21 F. Notice and Samples

22 (1) PHH will make every reasonable effort to notify DEQ of any excavation,
23 drilling, sampling, or other field work to be conducted under this Consent Judgment at least five
24 working days before such activity, but in no event less than 24 hours before such activity. Upon
25 DEQ's verbal request, PHH will make every reasonable effort to provide a split or duplicate
26 sample to DEQ or allow DEQ and/or its authorized representative to take a split or duplicate of

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any sample taken by PHH while performing work under this Consent Judgment. DEQ will provide PHH with copies of all analytical data from such samples as soon as practicable.

(2) In the event DEQ conducts any sampling or analysis in connection with this Consent Judgment, DEQ will, except in an emergency, make every reasonable effort to notify PHH of any excavation, drilling, sampling, or other field work at least 72 hours before such activity. DEQ will use all reasonable good faith efforts not to adversely affect the Restoration Action. Upon PHH's verbal request, DEQ will make every reasonable effort to provide a split or duplicate sample to PHH or allow PHH to take a split or duplicate of any sample taken by DEQ, and will provide PHH with copies of all analytical data for such samples. PHH will provide DEQ with copies of all analytical data from such samples as soon as practicable.

G. Quality Assurance

(1) PHH will conduct all sampling, sample transport, and sample analysis in accordance with the Quality Assurance/ Quality Control ("QA/QC") provisions approved by DEQ as part of the work plan. All plans prepared and work conducted as part of this Consent Judgment must be consistent with DEQ's *Environmental Cleanup Program Quality Assurance Policy No.760.00*, dated April 3, 2001. PHH will make every reasonable effort to ensure that each laboratory used by PHH for analysis performs such analyses in accordance with such provisions.

(2) In the event DEQ conducts sampling or analysis in connection with this Consent Judgment, DEQ will conduct sampling, sample transport, and sample analysis in accordance with the QA/QC provisions of the approved work plan. Upon written request, DEQ will provide PHH with copies of DEQ's records regarding such sampling, transport, and analysis.

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H. Progress Reports

For the duration of this Consent Judgment, or until DEQ issues a certification of completion, PHH will submit progress reports to DEQ describing its activities at the Property under this Consent Judgment. DEQ does not expect the progress report to exceed two pages in length. Progress reports must be submitted quarterly; provided, during periods of significant activity, DEQ may require monthly reports. At a minimum, one copy of these reports will be submitted to the DEQ Project Manager. Submittal by email is acceptable. The progress report must address, at a minimum:

- (1) Activities undertaken by PHH at the Property during the previous reporting period;
- (2) Activities scheduled to be taken by PHH during the next reporting period;
- (3) A summary of sampling and test results and any other data generated by PHH during the previous reporting period; and
- (4) A description of any problems experienced by PHH during the previous reporting period, and the actions taken to resolve them.

I. Other Applicable Laws

- (1) All work under this Consent Judgment must be performed in accordance with applicable federal, state, and local laws.
- (2) All work under this Consent Judgment must be performed in accordance with any applicable federal, state, and local laws related to archeological objects and sites and their protection. If archeological objects or human remains are discovered during any activity at the Property, PHH will, at a minimum: (a) stop work immediately in the vicinity of the find; (b) provide any notifications required by ORS 97.745 and ORS 358.920; (c) notify the DEQ Project Manager within 24 hours of the discovery; and (d) use best efforts to ensure that PHH and its employees, contractors, counsel, and consultants keep the discovery confidential, including but not limited to refraining from contacting the media or any third party or otherwise sharing

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1 information regarding the discovery with any member of the public. Any project delay caused
2 by the discovery of archeological object or human remains is a Force Majeure under Subsection
3 4.K.

4 J. Reimbursement of DEQ Costs

5 (1) DEQ will submit to PHH a monthly invoice of costs actually and
6 reasonably incurred by DEQ under ORS 465.200 et seq. on or after September 3, 2010 in
7 connection with any activities related to development of this Consent Judgment, oversight of
8 PHH's implementation of this Consent Judgment, and periodic review. Each invoice will
9 include a summary of costs billed to date.

10 (2) DEQ oversight costs payable by PHH include direct and indirect costs.
11 Direct costs include site-specific expenses, DEQ contractor costs, and DEQ legal costs. DEQ's
12 direct cost summary will include a Land Quality Division ("LQD") direct labor summary
13 showing the persons charging time, the number of hours, and the nature of work performed.
14 Indirect costs include those general management and support costs of DEQ and of the LQD
15 allocable to DEQ oversight under this Consent Judgment and not charged as direct, site-specific
16 costs. Indirect charges are based on actual costs and applied as a percentage of direct personal
17 services costs. DEQ will maintain work logs, payroll records, receipts, and other documents to
18 document work performed and expenses incurred under this Consent Judgment and, upon
19 request, will provide copies of such records to PHH.

20 (3) Within 30 days of receipt of DEQ's invoice, PHH will pay the amount of
21 costs billed by check payable to the "State of Oregon, Hazardous Substance Remedial Action
22 Fund," or invoke dispute resolution under Subsection 4.L. After 30 days, any unpaid amounts
23 that are not the subject of pending dispute resolution, or that have been determined owing after
24 dispute resolution, become a liquidated debt collectible under ORS 293.250 or other applicable
25 law.

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(4) PHH will pay simple interest of 9% per annum on the unpaid balance of any DEQ oversight costs, which interest will begin to accrue at the end of the 30-day payment period, unless dispute resolution has been invoked. Interest on any amount disputed under Subsection 4.L. will begin to accrue 30 days from final resolution of any such dispute.

K. Force Majeure

(1) If any event occurs that is beyond PHH's reasonable control and that causes or might cause a delay or deviation in performance of the requirements of this Consent Judgment despite PHH's reasonable efforts ("Force Majeure"), PHH will promptly, upon learning of the event, notify DEQ's Project Manager verbally of the cause of the delay or deviation, its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation, and the timetable by which PHH proposes to carry out such measures. PHH will confirm this information in writing within five working days of the verbal notification or as soon as practicable thereafter.

(2) If PHH demonstrates to DEQ's satisfaction that the delay or deviation has been or will be caused by Force Majeure, DEQ will extend times for performance of related activities under this Consent Judgment as appropriate. Circumstances or events constituting Force Majeure might include but not be limited to acts of God, unforeseen strikes or work stoppages, fire, explosion, riot, sabotage, war, and delays in receiving a governmental approval or permit. Increased cost of performance or changed business or economic circumstances may not be considered Force Majeure.

L. Dispute Resolution

(1) If PHH disagrees with DEQ regarding any matter during implementation of this Consent Judgment, PHH will promptly notify DEQ in writing of its objection. DEQ and PHH then will make a good-faith effort to resolve the disagreement within 14 days of PHH's written objection. At the end of the 14-day period, DEQ will provide PHH with a written statement of its position from DEQ's Northwest Region Cleanup Manager. If PHH still

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disagrees with DEQ's position, then PHH, within 14 days of receipt of DEQ's position from the Cleanup Manager, will provide PHH's position and rationale in writing to the Northwest Region Administrator. The Region Administrator may discuss the disputed matter with PHH and, in any event, will provide PHH with DEQ's final position in writing as soon as practicable after receipt of PHH's written position.

(2) If PHH refuses or fails to follow DEQ's final position pursuant to Paragraph 4.L.(1), and DEQ seeks to enforce its final position, the Parties, subject to Subsection 2.A. and Section 7, are entitled to such rights, remedies, and defenses as are provided by applicable law.

(3) During the pendency of any dispute resolution under this subsection, the time for completion of work or obligations affected by such dispute is extended for a period of time not to exceed the actual time taken to resolve the dispute. Elements of work or obligations not affected by the dispute must be completed in accordance with the applicable schedule.

M. Indemnification

(1) PHH will indemnify and hold harmless the State of Oregon and its commissions, agencies, officers, employees, contractors, and agents from and against any and all claims arising from acts or omissions related to this Consent Judgment of PHH or its officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ may not be considered a party to any contract made by PHH or its agents in carrying out activities under this Consent Judgment.

(2) To the extent permitted by Article XI, Section 7, of the Oregon Constitution and by the Oregon Tort Claims Act, the State of Oregon will indemnify and hold harmless PHH and its officers, employees, contractors, and agents from and against any and all claims arising from acts or omissions related to this Consent Judgment of the State of Oregon or its commissions, agencies, officers, employees, contractors, or agents (except for acts approving or omissions constituting approval of any activity of PHH under this Consent Judgment). PHH

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1 may not be considered a party to any contract made by DEQ or its agents in carrying out
2 activities under this Consent Judgment.

3 N. Parties Bound

4 This Consent Judgment is binding on the Parties and their respective successors,
5 agents, and assigns. The undersigned representative of each Party certifies that he or she is fully
6 authorized to execute and bind such party to this Consent Judgment.

7 O. Modification

8 DEQ and PHH may modify this Consent Judgment by mutual written agreement,
9 subject to approval by this Court.

10 P. Service

11 PHH will accept service of process by mail, to Mark Heintz, Wildlands, 3855
12 Atherton Road, Rocklin CA 95675, and to Tom Lindley, Perkins Coie LLP, 1120 N.W. Couch
13 Street, Tenth Floor, Portland, OR 97209-4128, with respect to any matter relating to this
14 Consent Judgment. PHH waives any other service requirements set forth in the Oregon Rules of
15 Civil Procedure or local rules of this Court. PHH need not file an answer to the complaint in this
16 action unless or until the Court expressly declines to approve this Consent Judgment.

17 Q. Recording

18 Within 14 days of entry of this Consent Judgment by the Court, PHH will submit
19 a copy or original of this Consent Judgment (whichever is required by the county) to be recorded
20 in the real property records of Multnomah County, Oregon. PHH will provide DEQ with written
21 evidence of such recording within seven days of recording.

22 R. Effect of Consent Judgment

23 (1) In addition to assessment of administrative civil penalties under
24 ORS 465.900 by DEQ, either Party may seek enforcement of this Consent Judgment by this
25 Court. If DEQ seeks enforcement of this Consent Judgment by this Court, DEQ may seek
26

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monetary sanctions, such as civil penalties, only if DEQ has not assessed and collected administrative civil penalties under ORS 465.900 regarding the same violation.

(2) Subject to Section 2, PHH does not admit any liability, violation of law, factual or legal findings, conclusions, or determinations asserted in this Consent Judgment.

(3) Nothing in this Consent Judgment is intended to create any cause of action in favor of any person not a party to this Consent Judgment.

(4) If for any reason the Court declines to approve this Consent Judgment in the form presented, this settlement is voidable at the sole discretion of any Party and the terms of the settlement may not be used in evidence in any litigation among or against the Parties.

(5) Subject to Subsection 8.A., nothing in this Consent Judgment prevents DEQ, the State of Oregon, or PHH from exercising any rights each might have against any person not a party to this Consent Judgment.

(6) DEQ and PHH intend for this Consent Judgment to be construed as a judicially-approved settlement, by which PHH has resolved its liability to the State of Oregon, within the meaning of Section 113(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9613(f)(2), regarding the release or threatened release of hazardous substances addressed in this Consent Judgment, and for PHH not to be liable for claims for contribution regarding the release or threatened release of hazardous substances to the extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §§ 9613(f)(2).

(7) Unless specified otherwise, the use of the term “days” in this Consent Judgment means calendar days.

(8) This Consent Judgment is void and of no effect if PHH does not complete purchase of the Property by December 31, 2011.

5. Releases from Liability and Covenant Not to Sue

A. Pursuant to ORS 465.327, subject to the satisfactory performance by PHH of its obligations under this Consent Judgment, PHH is not liable to the State of Oregon under

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1 ORS 465.200 to 465.545 and 465.900 for a release of hazardous substances at and from the
2 Property existing as of the date of PHH's acquisition of ownership or operation of the Property
3 ("Existing Hazardous Substance Releases"). PHH bears the burden of proving by a
4 preponderance of the evidence that a hazardous substance release existed as of the date of PHH's
5 acquisition of ownership or operation of the Property.

6 B. The release from liability under Subsection 5.A. does not affect liability of PHH
7 for claims arising from:

8 (1) A release of hazardous substances at or from the Property on or after the
9 date of PHH's acquisition of ownership or operation of the Property;

10 (2) Contribution to or exacerbation of, on or after the date of PHH's
11 acquisition of ownership or operation of the Property, a release of hazardous substance at or from
12 the Property;

13 (3) Interference or failure to cooperate, on or after the date of PHH's
14 acquisition of ownership or operation of the Property, with DEQ or other persons conducting
15 remedial measures under DEQ's oversight at the Property;

16 (4) Failure to exercise due care or take reasonable precautions, on or after the
17 date of PHH's acquisition of ownership or operation of the Property, with respect to any
18 hazardous substance at the Property;

19 (5) Disposal or management of hazardous substances or solid waste removed
20 from the Property by or on behalf of PHH;

21 (6) Criminal liability;

22 (7) Violation of federal, state, or local law on or after the date of PHH's
23 acquisition of ownership or operation of the Property;

24 (8) Any matters as to which the State of Oregon is owed indemnification
25 under Paragraph 4.M.(1);
26

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(9) Claims based on any failure by PHH to meet any requirements of this Consent Judgment; and

(10) Claims based on any lease issued or proprietary interest asserted by the State of Oregon concerning the Property.

C. Pursuant to ORS 465.325, subject to satisfactory performance by PHH of its obligations under this Consent Judgment, the State of Oregon covenants not to sue or take any other judicial or administrative action against PHH under ORS 465.200 to 465.545 and 465.900 regarding Existing Hazardous Substance Releases at the Property, except that the State of Oregon reserves all rights against PHH with respect to claims and liabilities enumerated in Subsection 5.B.

D. Subject to satisfactory performance by PHH of its obligations under this Consent Judgment, DEQ releases PHH from liability to DEQ under any federal or state statute, regulation, or common law, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, regarding Existing Hazardous Substance Releases at the Property, except that DEQ reserves all rights against PHH with respect to claims and liabilities enumerated in Subsection 5.B.

6. Contribution Actions

A. This Consent Judgment is a judicially-approved settlement within the meaning of ORS 465.325(6)(b), pursuant to which PHH has resolved its liability to the State of Oregon regarding Existing Hazardous Substances Releases as set forth in Section 5. PHH is not liable for claims for contribution regarding Existing Hazardous Substance Releases as described in Subsection 5.A.

B. Subject to Section 7, PHH may seek contribution in accordance with ORS 465.325(6)(c)(B).

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1 7. Defendant Waivers

2 A. PHH waives any claim or cause of action it might have against the State of
3 Oregon arising from contamination at the Property existing as of the date of PHH's acquisition
4 of ownership or operation of the Property; provided, PHH reserves all rights concerning the
5 obligations of DEQ under this Consent Judgment.

6 B. PHH waives any rights it might have under ORS 465.260(7) and 465.325(2) to
7 seek reimbursement from the Hazardous Substance Remedial Action Fund or the Orphan Site
8 Account for costs incurred under this Consent Judgment or related to the Property.

9 8. Benefits and Burdens Run with the Land

10 A. Pursuant to ORS 465.327(5), the benefits and burdens of this Consent Judgment
11 run with the land; however, the releases from liability and covenant not to sue set forth in Section
12 5 limit or otherwise affect the liability only of persons who: (1) are not potentially liable under
13 ORS 465.255 for a release of hazardous substances at the Property as of the date of that person's
14 acquisition of ownership or operation of the Property; and (2) expressly assume in writing, and
15 are bound by, the terms of this Consent Judgment applicable to the Property as of the date of
16 their acquisition of ownership or operation.

17 B. Upon transfer of ownership of the Property, or any portion of the Property, from
18 PHH to another person or entity, PHH and the new owner will provide written notice to the DEQ
19 Project Manager within 10 days after the transfer. No change in ownership of the Property or the
20 corporate or partnership status of PHH in any way alters PHH's obligations under this Consent
21 Judgment, unless otherwise approved in writing by DEQ.

22 9. Certification of Completion

23 Upon PHH's completion of work under this Consent Judgment, PHH will submit a final
24 closeout report to DEQ signed both by an Oregon-registered professional engineer and PHH's
25 Project Manager certifying that the work has been completed in accordance with this Consent
26 Judgment. The report must summarize the work performed and include all necessary supporting

PROPOSED CONSENT JUDGMENT FOR PUBLIC REVIEW

documentation. DEQ will preliminarily determine whether work has been performed for the Property in accordance with this Consent Judgment. Upon a preliminary determination that the work has been satisfactorily performed, DEQ will provide public notice and opportunity to comment on a proposed certification decision in accordance with ORS 465.320 and 465.325(10)(b). After consideration of public comment, and within 90 days after receiving PHH's closeout report, the Director of DEQ will issue a final certification decision. The certification decision will subsequently be submitted by DEQ to this Court. A certification of completion of the removal action does not affect PHH's remaining obligations under this Consent Judgment or for implementation of measures necessary to long-term protection of human health or the environment.

10. Continuing Jurisdiction

The Court retains jurisdiction over the Parties and the subject matter of this Consent Judgment.

IT IS SO ORDERED this ____ day of [Month], [Year]

Circuit Court Judge
Multnomah County

PROPOSED CONSENT JUDGMENT FOR PUBLIC REVIEW

1 STATE OF OREGON
2 DEPARTMENT OF ENVIRONMENTAL QUALITY

3
4 By: _____ Date: _____
5 [Administrator NAME]
6 Administrator
7 Land Quality Division

8 ATTORNEY GENERAL
9 STATE OF OREGON

10 By: _____ Date: _____
11 [Assistant Attorney General NAME]
12 Assistant Attorney General
13 Oregon Department of Justice
14 1515 SW Fifth Avenue, Suite 410
15 Portland, OR 97201

16 [Defendant]

17 By: _____ Date: _____
18 [NAME of Defendant Signor],[Title]
19 [Defendant]
20 [Street Address]
21 [City, State, ZIP]